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John
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Dedication
exercises

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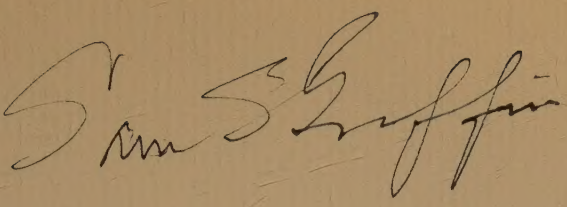

At the Statue · January 7th, 1930.

JOHN MARSHALL *and* PHILADELPHIA

DEDICATION EXERCISES AT THE STATUE OF JOHN MARSHALL

ART MUSEUM

WEST ENTRANCE

JANUARY 7TH, 1930

FOREWORD

"It has pleased the Providence of God to raise up from time to time, and to crown with length of days, men of preëminent goodness and wisdom."

—Horace Binney.

The statue of the great Chief Justice, which is on the western terrace of the Art Museum, overlooking the Schuylkill River, was the gift of the Hon. James M. Beck, formerly Solicitor General of the United States, Congressman from the First Congressional District of Pennsylvania, and one of the Vice-Presidents of the Fairmount Park Art Association. The Chancellor of the Law Association received the following communication from Mr. Beck:

"December 8, 1928.

"Francis Shunk Brown, Esq.,
Chancellor of the Law Association,
Philadelphia, Pa.

"My Dear Mr. Chancellor:

"On the 6th day of July, 1835, Chief Justice Marshall died in Philadelphia. There were many other ties, which connected him with our history and with the Bench and Bar of Philadelphia.

"As we know, the Supreme Court of the United States for a time held its sessions in Philadelphia and while Marshall was not at that time one of the Justices, yet in Philadelphia he argued the great case of Ware *v.* Hilton. From Philadelphia he went to France on a great diplomatic mission and to Philadelphia he returned on the completion of that mission and was received with great enthusiasm. In his latter years he came to Philadelphia for medical treatment and its Bar was formally presented to him. When his body was borne from Philadelphia to its last resting place the Liberty Bell ceased its tolling forever.

"On the day following his death, the Bar of Philadelphia met and started a movement for the erection of a suitable memorial to the great Chief Justice by the Bar of America. The fund was largely subscribed by our Bar. It grew very slowly, for all subscriptions were limited in amount to Ten Dollars and, as our Bar was not considerable in numbers, it is not strange that time was required.

"The fund was judiciously administered by trustees, who were members of our Bar, and in 1880, aided by an appropriation from Congress, it became sufficient in amount to proceed with the erection of the statue, which

now stands on the west side of the Capitol in Washington. The sculptor selected was William W. Story, who himself was a lawyer and a son of Marshall's great associate on Supreme Bench. When the statue was dedicated on May 10, 1884, the oration was delivered by William Henry Rawle, of our Bar.

"It has long been in my mind that a replica of this statue should be erected in Philadelphia to show the affection of the historic Bar of Philadelphia for the great Chief Justice and to commemorate the connection between Marshall and that Bar.

"With this thought in mind, I was able to secure from the appropriate committee of Congress the necessary permission to make a plaster model from the original statue. I have now made a contract with a Baltimore company to cast the statue in bronze and have assumed the entire expense of such casting. The Fairmount Park Art Association has very generously agreed to erect the pedestal. My information is that the statue will be completed and ready for dedication early in the coming spring.

"I am advising the Law Association of Philadelphia of these facts in the hope that it may deem the unveiling of this statue a

worthy occasion for the Bar of Philadelphia to show its respect for the greatest of American jurists and to recognize the inestimable part that he played in the development of our constitutional form of government.

"I am hoping that the Law Association will be willing to appoint a committee to take in charge the unveiling exercises and, while the selection of the orator of the occasion is one for your Association, I venture to suggest that no selection could be more appropriate than that of our fellow-member, Hampton L. Carson, who has not only written the history of the Supreme Court, but who also wrote the history of the Centennial Anniversary of the Constitution.

"Hoping that these suggestions may meet with your approval, I am

Respectfully yours,
James M. Beck."

The Law Association adopted the following resolution:

"Ira Jewell Williams called attention to the generous gift to the City of Philadelphia by the Hon. James M. Beck of a copy of the Story statue of John Marshall, now at the

Capitol, to be placed at the western entrance of the Art Museum, this City, and suggested that some recognition of his action be taken by the Association.

"Roland S. Morris then introduced the following resolution:

" 'Resolved that the Law Association of Philadelphia express their appreciation of the generous gift of the Hon. James M. Beck to the City of Philadelphia of a copy of the Story statue of John Marshall, now at the Capitol, to be placed at the western entrance of the Art Museum.

" 'Resolved that the members of this Association be notified by the Secretary of the time of the unveiling exercises, which are to be under the auspices of this Association, acting with the Fairmount Park Art Association and the Commissioners of Fairmount Park.'

"This resolution was duly seconded and adopted, with an amendment to the effect that a copy of this resolution be sent to Mr. Beck."

Subsequently the Fairmount Park Art Association, which furnished the pedestal, and the Commissioners of Fairmount Park, were asked to take part in the dedication.

The statue is a replica of the statue carved by Wetmore Story, nephew of Mr. Justice Story, which was dedicated in 1884 in its present location on the southern plaza of the Capitol at Washington. It was through the generosity and initiative of the Bar of Philadelphia that the original statue was carved. When John Marshall died in Philadelphia on July 6th, 1835, the Bar of Philadelphia projected and carried on a memorial fund, which was later supplemented by Congress. The Philadelphia Bar, in amounts expressly limited to not more than $10. each, contributed half the total sum raised by the lawyers of the country. Those interested will find the facts recorded in a volume entitled "Exercises at the Ceremony of Unveiling the Statue of John Marshall, May 10, 1884," with the address of Mr. Chief Justice Waite and the oration of William Henry Rawle, Esq.; also the proceedings of the Philadelphia Bar relating to the monument of Chief Justice Marshall.

It is especially fitting that John Marshall should be remembered here. Near here, at Iron Hill, Brandywine, Germantown and at Monmouth, as well as during the hunger and nakedness of that gaunt winter at Valley Forge, John Marshall bore himself bravely and with fortitude. This is the

City not only of the Declaration of Independence, but of the Constitution of the United States, and it was Marshall who, under the lead of Madison, after a severe contest and by a close vote, succeeded in securing ratification by the Virginia convention. It was here that Marshall argued the great case of the confiscation by Virginia of the British debts. It was here that Marshall announced in the last Congress that sat in Philadelphia the death of Washington.

While Marshall was Secretary of State under Adams the President requested the Secretary of War to execute the office of Secretary of State so far as to affix the seal of the United States to the commission to John Marshall of Virginia to be Chief Justice of the United States. Marshall, when appointed on the 31st day of January, 1801, was 46 years old. During the 34 years in which he sat as Chief Justice far-reaching questions of momentous importance came before the Court for decision—questions relating to the power of the central government and the reserved rights of the States and the people thereof, and questions directly affecting the individual rights of citizens, the very liberty for which Marshall fought and to secure whose blessings the Constitution was

adopted. Liberty was not a new concept. But America's unique contribution to human freedom was to enshrine fundamental precepts of freedom in a written constitution, and by the judicial power to protect those precepts against the encroachment of government itself. We of free America wanted neither a despotic executive nor an omnipotent parliament. This grave and final power of deciding as between the proper functions of government and the inalienable rights of free men was given to the judges, and especially to the Justices of the Supreme Court of United States. No one can overstate the debt which constitutional law and liberty owes to John Marshall and his colleagues. Doubtless it was in the spirit of enthusiasm for John Marshall as the greatest expounder of the greatest of all human instruments of government that this gift to the City of Philadelphia of the statue of John Marshall was made by the donor. If our glorious heritage, in which the life and work of John Marshall bulk so large, is to be preserved, it must be through true understanding and real enthusiasm for the great covenant of our fathers and for those men who made and maintained it.

I. J. W.

JOHN MARSHALL AND PHILADELPHIA

Dedicatory Exercises of the Statue of John Marshall

January 7th, 1930.

The affair was under the direct charge of a committee composed of J. Rodman Paul, Esq., Eli Kirk Price, Esq., and Ira Jewell Williams, Esq.

Ira Jewell Williams, Esq.: The Commissioners of Fairmount Park, the Fairmount Park Art Association and the Law Association of Philadelphia, bid you welcome on this occasion, and I shall merely have the pleasure of presenting to you the Chairman, the Chancellor of the Law Association.

George Wharton Pepper, Esq.: It is Mr. Williams' habit to pass on to others duties which he could more gracefully perform himself. There is, however, an appropriateness in recognizing the Law Association of Philadelphia on an occasion like this, and it is merely because I happen to be for the time being Chancellor of that body, that I have the honor of presiding over this meeting.

First, I shall present to you the speakers whom we shall presently hear with pleasure, and then I shall ask you to accompany us to the base of the monument itself, to the end that the formal exercises of dedication may take place there. I now present a lawyer of distinction, a deep student of our constitutional history, a patron of the arts, and a citizen of whom his community is proud, John Frederick Lewis.

JOHN FREDERICK LEWIS, ESQ.: So much has been written about John Marshall, the great Chief Justice of the United States, that it is difficult to say anything new about him. Nevertheless, we cannot recall too often his authoritative influence in the development of American Law—an influence which gathers strength as the years go by—though nearly a century has elapsed since his death. However this may be, we will consider together, not what he did for the law and for lawyers, but what he did for you and for me as laymen, in securing and defending our birthright as American citizens.

The facts concerning Marshall's private life may be quickly recalled. He was born in Fauquier

County, Virginia, September 24, 1755, the eldest of fifteen children. He was the son of a planter and the grandson of a planter, born in the backwoods, and characteristically American in his birth and education. He was largely taught by his father, but studied Latin for a short time in Westmoreland County, where Washington, Monroe, and the Lees had been born, and under a neighboring clergyman, with whom he remained about a year, having as a fellow student James Monroe. His father encouraged him in the study of literature, especially the classical writers of the English school, and thus doubtless contributed to establish that clear and limpid style which characterized all his public writings. He selected the law as his profession and began its study in his eighteenth year in that admirable method followed by so many of the senior Bar, of reading and rereading "Blackstone's Commentaries on the Laws of England," until he had completely mastered them.

Marshall's father was a staunch Whig and resisted every political movement made by Great Britain, as tending to his personal enslavement and that of his posterity, and when the War of

the Revolution broke out, became a captain. The junior Marshall became a lieutenant in a regiment of Minute Men, composed of volunteers from Culpepper, Orange, and Fauquier Counties, numbering some 350, the first Minute Men raised in the Old Dominion. Of these citizen-soldiers, John Randolph said that they were "raised in a minute, armed in a minute, marched in a minute, fought in a minute, and conquered in a minute." Wearing green hunting shirts, with the words "Liberty or Death" in large white letters on their bosoms, they had buck tails on their heads, carried tomahawks and scalping knives in their belts, and were calculated to strike terror into the hearts of an enemy. Notwithstanding their costume, they treated their British prisoners with kindness, which was reciprocated when any of the company were captured.

Marshall served as a soldier during the gloomiest period of the War. He fought at Iron Hill, which preceded the Battle of Brandywine. He fought at Germantown. He starved with the exhausted troops at Valley Forge and suffered all the wretchedness of that memorable encampment. He fought at Trenton. He fought at Monmouth. He was with Wayne at Stony Point, and with the Virginia

line in South Carolina, and when his native State was invaded by Arnold, he joined the forces to oppose him.

When that danger was over, he devoted himself with unremitting attention to the study of the law. His quiet determination and pursuit of purpose, and his mixed progressiveness and conservatism, are well illustrated by the journey he took in the Summer of 1780, when in his twenty-fifth year, he walked to Philadelphia all the way from his home in Virginia, in order to be inoculated with the smallpox. Inoculation was then regarded as a wise but doubtful preventive, because the resulting smallpox might be severe and the patient contagious to those around him, and it was afterwards prohibited in England by Act of Parliament.

Marshall's legal knowledge was necessarily not extensive, but his naturally good mind and direct and lucid arguments, soon secured him a wide reputation, until he became the leading lawyer in Virginia.

Wirt says of him, that in the conduct of his cases he invariably seized one point only which he made the pivot of the controversy, and which he

enforced with all his powers, never permitting his own mind to wander from it, nor his hearers to be misled by unimportant considerations.

He never sought the emoluments of public office. He preferred to continue his practice at the Bar, and when he did engage in public service it was for some special reason.

Let us look for a moment at the condition of the country at this time. The States were confederated by the necessities of war but not united. There was no central government able to compete with the problems which arose. While the Declaration of Independence had temporarily united the States, they were mutually jealous and valued their own interests above those of the general welfare. The affairs of the country were conducted more by the activity and influence of its leading men, than by the authority of such Government as there was. Patriots like Washington and Morris, Hamilton, Jefferson, Hancock, Franklin, Jay, and the Adamses, planned, persuaded and warned by voice and letter, the necessity for action or the wisdom of delay. When the Articles of Confederation were adopted, July 9, 1778, they were a great step forward, but they provided no

central government adequate to meet the needs of the country. They were in terms a mere "league of friendship." They were signed by the delegates of the States as such. Each State retained its own sovereignty, freedom, and independence, and every power, jurisdiction, and right which was not expressly delegated. Each State was expected to pay the charges of war, in proportion to the value of the land it comprised, but the tax for paying that proportion was to be laid by its own Legislature. The delegates represented the Legislatures of the several States and not the people. The Congress established by the Confederation could incur obligations, but could not raise money to pay them. It could make treaties, but could not enforce them. There was no executive. There was no judiciary. There was no power whatever to levy taxes. Money could be raised by request only, not by command. The States, big and little, had an equal voice in this jealous partnership, and before any action could be taken, nine out of the thirteen must concur.

The prolongation of the war was due almost solely to the inadequacy of the Government in supplying men and means to conduct it, and this inadequacy was the direct cause of the starvation

at Valley Forge. The confederated Congress did next to nothing. They talked much and acted but little. At every crisis which arose, local prejudice and provincial jealousy cropped out. The great Commander-in-Chief was criticised for conditions Congress alone was responsible for, and had it not been for the ceaseless activity of these groups of leading men, the War of Independence would have been lost, and even when peace was declared, the States failed to act in their common interest but devoted their energies rather to their own affairs. Besides, many men of conservative strength and great ability left the country with the loyalists at the end of the War. Passion and prejudice took the part of cool and impartial judgment. Incredible numbers of those who were Tories and opposed to independence emigrated. During 1782 and 1783, they passed over the boundaries, in flight, ruined and proscribed, their lands confiscated and their persons attainted. They went to Canada, to Florida under Spanish rule, to the Bermudas, and the West Indies, they rushed to New York under shelter of the British arms, and their number was so great that they delayed the final evacuation of the City until transportation could be afforded them. It has been computed

that nearly 30,000 refugees left the State of New York alone for Canada, an enormous number, in view of the then small total population of the country.

The five years which followed the end of the War have been termed the most critical in American history. Public matters sank into disorder and confusion. The general tendency of the country's affairs seemed to be downward. Gloomy forebodings were universal. The Federal Government must be strengthened, must be given more effective power not only over foreign but also over domestic affairs. In the several States, almost without exception, any national sovereignty was viewed with extreme jealousy, and while it was admitted that the Articles of Confederation were quite unequal to the task of forming a "perfect union," the most reflective minds in the country hesitated to confer the necessary power on any central government. They believed it would imperil the liberties and independence of the States. Indeed a dissolution of the Union was viewed by many as preferable to that of a consolidation of the Government.

Peace existed only as a cessation of war from without, but within, the country was torn and

distracted with all the hatred that the conflict had engendered. No line was drawn between those who actually fought for England and those who waited in hesitation without actual participation in the struggle. All were classed as traitors. Those who were not for independence were judged as being against it. Many an act of needless and cruel persecution resulted. Even Washington, notwithstanding the nobility of his character, was outspoken in bitterness against the Tories. Utter demoralization resulted. The Federal Government was saddled with an enormous debt, and the several States burdened beyond their capacity to pay. Private credit was pledged for public obligations and business was crippled by the want of confidence. Paper money was issued beyond the possibility of redemption. Its total bulk grew larger as its purchasing value grew less. Continental money became a by-word for utter worthlessness, and despite individual sacrifices, general conditions grew worse. Robert Morris had pledged to the last farthing his then large fortune to raise money, as Washington had done, to pay the troops at Trenton. He had borrowed money from foreign sources to supply the needs of the army at Yorktown, and thus assisted to bring

about the conditions which made the surrender of the British inevitable.

The disbandment of the army was a difficult problem. The soldiers' pay was not forthcoming. Congress seemed about to adjourn and send them home penniless. Insurrection broke out. Treason seemed to be in the air, and we can understand how one of Washington's most trusted officers should intimate the willingness of the army to make him King, so that the petty States might be united under a rule of order and efficiency.

John Marshall's training under his father, and his experience in the army, both convinced him of the necessity for a national sovereignty sufficient to unite the States in a central government. He was convinced that the country's salvation depended upon a wider aspect of public affairs. He maintained that the Government should have sufficient strength to preserve the union and pass its benefits to posterity. Hence, when the Federal Convention was called to prepare a Constitution for the United States, he hailed it as an auspicious event and supported the movement to the uttermost, and when the Constitution had been finally drafted, and referred to the States for adoption,

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he was outspoken in its advocacy. It differed radically from the old Articles of Confederation. Its preamble read: "We, the people of the United States," not "We, the delegates of the Legislatures of the several States."

It was designed not as a mere "league of friendship," but "to form a more perfect union." It was and is remarkably brief, clear and concise. The Senate and House of Representatives in which the supreme legislative power was vested, were to be paid out of the Treasury of the United States, as contrasted with the provisions of the Articles of Confederation, that each State should maintain its own delegation.

Congress was given express power to lay taxes, express power to pay debts, and provide for the common defense and general welfare. The powers given were, in a word, all those which the Articles of Confederation ought to have given, but failed to do, and then after the enumeration of the various powers expressly granted, the Constitution provided that Congress should have power: "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," and the word "execution," was spelled with a capital "E."

Instead of a mere "talkative," an executive was provided, in the simple words "the executive power shall be vested in a President of the United States," and among the duties of the President, was the power, by and with the advice and consent of the Senate, to appoint Judges of the Supreme Court.

Instead of no judiciary at all, the judicial power of the United States was vested in one Supreme Court, and in such inferior courts as Congress might from time to time ordain and establish. It was independent of Congress. The Judges held their offices during good behavior. Their salaries could not be decreased during their terms of office. Their jurisdiction was supreme.

While the Constitution preserved the integrity of the several States and left them sovereign in home rule, police, education, and land titles, it created one Government in interstate and international affairs.

Well might Gladstone declare, that the Constitution was "the most wonderful work ever struck off at a given time by the brain and purpose of man." It was the concentrated intelligence of a republic of freemen, the first time in the history of the world, in which a great nation had been

formed upon the basis of a single written agreement. Notwithstanding the tremendous growth of the country, in wealth, in commerce, in manufacturing, and the radical changes in navigation, in transportation; in the growth of cities, and the amazing development of the great West, the Constitution, with its few amendments, has been equal to every exigency, and adaptable to every condition.

Strange as it may seem, the opposition to its adoption by the several States was violent in the extreme. Samuel Adams of Massachusetts opposed it. Patrick Henry of Virginia fought it. It narrowly escaped rejection by the State of New York. Pennsylvania adopted it only after a bitter fight and by a bare two-thirds vote. North Carolina and Rhode Island absolutely refused their consent. They allowed the new Government to be erected without their aid, and remained apart as separate sovereignties, until economic conditions necessarily brought them under its protection. The voters of the country were generally opposed to it. Probably not more than one-fourth of the adult white male population voted at all, and it is said that but one-sixth only of the total white male population cast their ballots in its behalf.

Virginia, Marshall's own state, and Washington's, Madison's and Monroe's, the first to hear the voice of Patrick Henry against English tyranny, seemed to bring the whole force of her influence against any central authority. Marshall took up the fight and in the Convention which Virginia called to accept or reject the Constitution, fought for it with modesty, but with convincing logic. So close were the parties divided, that the debate upon its adoption lasted for nearly four weeks, and was finally carried by a vote of only 89 to 79.

This was the first and most conspicuous service Marshall rendered us as American citizens. He had become a candidate for the convention, but his well known opinions in favor of the Constitution, seemed about to prevent his election. The Convention assembled at Richmond, June 2, 1788, and was composed of the leading men of the Old Dominion. As Marshall said, everything seemed to be afloat and the country without any safe anchorage. Among those who opposed the Constitution, besides Patrick Henry, were George Mason and William Grayson. Among those who supported it, were James Madison and Edmund Randolph, and to their aid John Marshall brought his commanding abilities. He contended that

the real object of the discussion was whether democracy or despotism were the more eligible. He urged that those who framed the Constitution and who now supported it, intended the establishment of democracy and its future security. Beginning with some reluctance and hesitation, it is said that his eye became more fixed, his voice clear, full, and rapid, and his manner bold, that his whole face lighted up with the mingled fire of genius and passion, while he poured forth an unbroken stream of eloquence, in a current deep, majestic and strong.

Marshall never wavered in supporting the Government organized in accordance with the Constitution, and the principles on which the Government was conducted by Washington, but the ruling party in Virginia were constantly in opposition to almost every important measure of Washington's administration. Disapprobation was manifest, and when the President's Proclamation of Neutrality was proclaimed, discontent strengthened the opposition. Marshall came to the support of Washington's course, and obtained at a meeting of the citizens of Richmond, a majority in support of the Proclamation, but he was assailed by those who thought otherwise. Even the purity of his

motives was attacked. He was charged with being a loyalist and an enemy of republicanism.

As a member of the Virginia Legislature to which he had been elected, he ever vindicated the measures of the administration, and in the session of 1796, when a Federalist moved a resolution expressing the confidence of the House in the virtue, patriotism, and wisdom of the President, a motion was promptly made to strike out the word "wisdom." The debate which followed, necessarily reviewed the whole course of Washington's administration. Feeling ran so high, that the word "wisdom" could be retained by a small majority only.

Marshall himself in his "Life of Washington," describes clearly the great issue which agitated our people. He says that the country was—

> "Divided into two great political parties, the one of which contemplated America as a nation, and labored incessantly to invest the Federal head with powers competent to the preservation of the Union. The other attached itself to the State Governments, viewed all the powers of Congress with jealousy, and assented reluctantly to endeavors which would enable the head to act in any respect independently of the members."

Marshall's second great service to us as American citizens, was the interpretation of that Constitution, when questions under it came before the Supreme Court of the United States, while he was Chief Justice.

The Constitution provided that the judicial power should extend to all cases arising under it and the laws of the United States, but the American lawyer, who had been trained to recognize Parliament as the center of all power under the British constitution, was unable to conceive that a law passed by Congress and signed by the President, could be pronounced unconstitutional by the Supreme Court. Such a doctrine was startling. It raised the gravest doubts. It had never before been asserted. It seemed to strike at the very roots of democracy, but it was manifest that Congress might pass a law which was contrary to the Constitution, and if it did who should pronounce it void? It might be necessary to construe the document. Who was to construe it? The doctrine that the Supreme Court could nullify an Act of Congress, was received by Jefferson and his followers with consternation, but not only did Marshall fearlessly declare unconstitutional an Act of Congress when he deemed it such, but also

he applied the same doctrine to acts of the State Legislatures. He pronounced unconstitutional a law of Georgia, and informed her that she was part of a large empire and a member of the American Union, and that Union has a Constitution which imposes limits upon State Legislatures.

He declared void an Act of the Legislature of Maryland, because it was designed to paralyze the branches of the United States Bank; and in the famous Dartmouth College case, he nullified an Act of the Legislature of New Hampshire, upon the ground that the Charter of the College was a contract with the State, and under the Federal Constitution no State could pass a law impairing the obligation of contracts.

While the unwritten British Constitution is interpreted and executed by the supreme power of Parliament alone, and any statute may be executed until repealed by the same authority, yet an Act of Congress may be set aside at any time by the Supreme Court as a violation of the fundamental law of the land.

This power of the Supreme Court was first announced by Marshall in 1803, after he had been Chief Justice about two years, and has never been questioned since. It remains today as the greatest

bulwark of our American liberties. Congress may be divided into blocs, may become socialistic, populistic, communistic, or anarchistic, but between us and its unlawful Acts, if any, there is a great gulf fixed, behind which sits a small body of select men, whose word is final in the decision of our rights.

Ours is a stronger and better Constitution than the more ancient British,—simpler, more definite, more democratic, and yet more secure against attack. The line of demarcation between the different functions of government, is the chief characteristic of the American system, and while in England, judges are personally and politically as independent as they are with us, our Federal judges form a separate department of the Government, not only independent, but equal, and not only equal, but when acting within their jurisdiction they are supreme.

It has been said that there is as much difference between the British Constitution and the American, as there is between the Lord High Chancellor of England proceeding to Westminster in his robes of office, in almost regal pageantry, and John Marshall driving himself to Court in a one horse gig, both shafts of which have been spliced with hickory twigs.

Marshall fully realized the sublime conception of our American Constitution, by which every citizen is subject to two complete systems of law—the one, Federal and National, supreme within its delegated powers, and the powers incidental thereto; and the other, the State and Municipal, likewise supreme within its reserved powers, and even more so, because powers not delegated are reserved. Each jurisdiction, "moving one within the other, noiselessly and without friction—one of the longest reaches of constructive statemanship the world has ever known."

In the interpretation of the Constitution, there were necessarily two methods—one liberal and the other strict, and Marshall, by a series of decisions, demonstrated beyond question, that the Constitution must be construed liberally in order to effectuate its purpose, and to his construction, we owe many of its blessings and few of its burdens. While Washington, and Hamilton, and Jefferson, and Madison, and Monroe, may be regarded as the architects and designers of the Governmental edifice, John Marshall was the builder. He applied the abstract principles of these men to the concrete conditions which the country presented. It has been said, that he found the Constitution

paper and made it a power, that he found it a skeleton and clothed it with flesh and blood. More credit is due to him for the present frame of our Government than to any other man in our history.

Let us recall a few of the beneficial activities of the Government, not expressly authorized by the Constitution, but which Marshall's liberal interpretation may be said to have rendered possible.

The Agricultural Department, with its Experiment Stations; the Bureau of Entomology; of Animal Industry; and the Prevention of Tuberculosis in live stock; the Department of Labor, the eight hour law, and the Board of Arbitration for Labor Disputes; the Bureau of Navigation; the Hydrographic Office; the safety of passengers at sea; boiler inspection; Quarantine Stations; relief of destitute seamen; marine hospitals; Coast and Geodetic survey; the Nautical Almanac; the weather bureau; the life saving service, and radio legislation; the Congressional Library, and the National Museum; the Geological Survey; the Forestry Service; the National Park system; the Immigration Bureau; and the Bureau of Education; the Bureau of Markets; Public Health

Service; Veterans' Bureau; Children's Bureau; Narcotic Control Board; the Interstate Commerce Commission; River and Harbor, and Internal improvement; National Irrigation; the Panama Canal; and National Banks; Federal Intermediate Credit Bank; Federal Land Bank, and the Federal Reserve System.

John Marshall died in Philadelphia, July 6, 1835, in a humble boarding house, kept by Mrs. Mary Crimm, on Walnut Street, south side above Fourth. It was No. 108, according to the old system of numbering houses west from the Delaware, but No. 426 in our time. He was in his eightieth year and had come to this City for relief from his infirmities. His strength was sapped by his age and his system did not respond to treatment. His death was a great shock to our people and especially to the Bar of Philadelphia. It has been said of Marshall, that with the single exception of Washington, no American citizen, either in public or private life, was so universally loved and esteemed. A committee of the Bar was appointed to accompany his body to Richmond for interment. Contributions were solicited to erect in Washington a memorial monument, but a panic

occurred in 1835, and money was hard to raise. The total received was less than $3,000. Philadelphia subscribed about half, and New York $10. Nothing daunted, the Philadelphia Committee invested the money, and it was finally turned over to the Law Association. In 1883, it had increased seven-fold and Congress gave permission to erect the monument in front of the Capitol, and appropriated $20,000. towards its cost.

The work was intrusted to William Wetmore Story, son of Joseph Story, who had been associate justice with Marshall for twenty-four years, and his selection for the Commission was peculiarly appropriate.

William Wetmore Story was an extraordinary man. He graduated from Harvard, then from its Law School where he studied under his distinguished father, and seemed fair to follow his father's footsteps. Judge Story, notwithstanding his arduous labors upon the Supreme Bench, wrote more law books than any man of his time; and Wetmore published: "Reports of Cases Argued and Determined in the Circuit Court of the United States for the First Circuit;" a "Treatise on the Law of Contracts;" and a "Treatise on the Law of Sales of Personal Property." He received the

degree of Doctor of Civil Law from Oxford, but like many lawyers he loved art. He went to Europe to study sculpture, and soon acquired an international reputation, and his works found place in many public and private collections. He was a poet of no mean ability—published four volumes of his verse, and was a prolific author, publishing some ten works on literature, art, and even science. He was an accomplished musician, decorated by France and Italy, and made a Professor in the Italian Academy of Santa Cecilia, and imparted his remarkable genius to two sons, Waldo Story, the sculptor, and Julian Story, the artist.

It is preëminently appropriate, that as the original statue was largely due to the Philadelphia Bar, a distinguished member of that Bar should now present to this City a replica of the original, as a token of respect for Marshall, and of affection for Philadelphia. The beautiful memorial is erected upon the western front of this Fairmount, looking towards the setting sun. It seems to tell us that while Marshall's course on earth has been run, and while "the heathen may rage and the people imagine a vain thing," yet if we are true to the immortal principles his judgments have declared, we will never be confounded.

Mr. Pepper: The Federal Judiciary are highly esteemed among us for probity, for learning, for the fearlessness with which they do exact justice between citizens of different states, and for the fidelity to principle which leads them to maintain the Constitution which Marshall expounded. John Marshall, himself, is the man who dignified the Federal tradition, and the speaker whom I next present is one of those who in our own day has worthily maintained that tradition. I present to you our able, our zealous and high minded senior Circuit Judge for the Third Circuit, the Honorable Joseph Buffington.

An Address by Joseph Buffington, Jurist, at the Dedication of a Memorial to Chief Justice John Marshall.

It is a new departure for the United States Government to permit one of its great statues to be duplicated and reproduced in another setting. There was just warrant for such action in the present case. The noble bronze figure of John Marshall, which rightly has the most prominent place at the Capitol, was the gift of the bar of Philadelphia to the United States. To permit a

member of that bar to reproduce the statue here in Philadelphia is a fitting acknowledgment by the Government of its appreciation of the original gift. Not only so, but John Marshall's life was particularly linked with the city of Philadelphia and the Commonwealth of Pennsylvania. It was after his long and arduous work was finished that John Marshall came to Philadelphia for surgical relief, and it was here that his great soul joined the company of the immortals.

In another sense we may say that John Marshall was born on Pennsylvania soil, for it was on the soil of that Commonwealth that John Marshall was born anew. He came to Pennsylvania's Valley Forge a Virginian; he left it an American. The great spirit of the expounder of the Constitution had its birth and came from the travail of that winter at Valley Forge. His noble constitutional opinions, to my mind, sprang from the lessons learned at Valley Forge in the school of bitter experience.

Marshall's career as a soldier has largely been overlooked. His father foresaw the coming of the revolutionary struggle and himself drilled in arms his sons, so that they, as well as their father, who also served at Valley Forge, were ready to

take part as trained men when the call to arms came. Marshall took part in the battle of the Brandywine and the battle of Germantown, and later on at Monmouth. Moved by this bronze memorial coming here to Philadelphia, I trust that at some future day a fitting tablet or monument, placed on the hills of Valley Forge, on the very spot where Marshall spent that memorable winter, will carry to the people from all sections of the United States, who in increasing numbers visit this greatest shrine of American independence, the fact that John Marshall bore his part in the rigors, the sufferings, the lessons of Valley Forge.

Representing, sir, as I do, at your invitation, the Federal judiciary, I can not refrain from recording the fact that there is no Federal circuit in the country that bears the relation to the Federal Constitution, of which Marshall was the great expounder, as does our own. The State of Delaware was the first to adopt the Constitution, the State of Pennsylvania the second, the State of New Jersey the third, and the stars of these three States, which make up the Third Circuit, stand at the head of the State stars of the flag.

Great men have no need that we praise them. The urge on us is to know them. To my mind

John Marshall was the real father and creator of the Constitution, because the bone and sinew of that Constitution sprang from his loins. When he came to the bench the Constitution was a mere theory, an untried, visionary experiment in government, a mere scrap of paper. When he ended his career thirty-four years afterwards he had breathed the breath of life into its body. He had forged a writing into sinewy strength. He had fashioned the ship of state to withstand the perils and powers of disunion. He had begat the soul of a nation. He had made self-government by liberty-loving people possible for all sorts and conditions of men. The Governments of the Western Hemisphere today, beginning with self-governing Canada on the north and ending with the southernmost of the Latin Republics on the south, are all the unconscious children of this great father of the American Constitution. All honor to the great minds who conceived its principles, formulated its articles, and brought to birth a nation to be founded on a constitution, but it was Marshall who took the puny, struggling, helpless, weakling child into his strong arms, his great patriotic heart, and made its sinews strong as steel. At Valley Forge Marshall had seen,

and suffered from, the weakness of a mere federation of States subordinating the interests of a so-called union to their own local selfishness. In cold and hunger he had suffered from the impotence of a Continental Congress without power to enforce what it decreed. He had sensed the weakness, the froth, and the talk without action of that Congress, and it was Valley Forge that burned into the soul of Marshall the conviction that to be a government by constitutional law the Constitution must be clothed with power to effect what it decreed. At Valley Forge he learned the lesson of a broad, all-inclusive spirit of nationalism, the catholicity of the national soul which Washington inspired and acted on, and from it all he had learned the lesson that sectionalism, localism, had to give way to a patriotism that included the whole Nation. In a word, he had learned the lesson that if America was to be governed for the people it must be for all the people and not for any particular section of the Union.

Shivering, ill clad, around the watch fires of Valley Forge he built up that courage, conviction, character—that intangible, unweighable, unbuyable thing that in the true man rings true and

responds to every strain and stress. It was on this trinity, first, a constitution with self-perpetuating power, second, patriotism that saw the Nation as a whole, and lastly, the simple, pure, unblemished depth of soul, that worked out in John Marshall the unity of a great soul, a great judge who made possible a great line of statesmen, who became possible because they trod in his footsteps and followed Marshall's interpretation of the Constitution. Coupled with all was the simple, modest, God-fearing man, for to this day they show you in the city where John Marshall lived the pew in the Church where in the rest days of his great human task he took time to draw near to Him who is the source and foundation of right and justice. He was an humble-minded man, but in the really great, humility adds a cubit to a great man's stature. He had no call to magnify himself or magnify the office he held. He made it great because he filled it. Like Saul of old, he towered above his brethren. Great as have been many of the men who followed in his judicial footsteps, no one has ever succeeded him. The mantle of Elijah fell on the waiting shoulders of Elisha because of the double spirit of Elijah for which Elisha prayed. But the

mantle of John Marshall was of a titan girth which those who followed him, great as they were, have never filled. In the rôle of the Federal judiciary, Marshall stands so high, so massive, so alone, that he is a pattern for his fellows to follow but never surpass. The times, the need of the hour, united to make Marshall the jurist whom other times and other needs could not duplicate. He was a foundation builder. As a soldier, he fought to gain liberty for his country, and as an expounder of the Constitution it was his happy fate to make that liberty secure and self-perpetuating. As a soldier, he fought to create his country; as a constitutional expounder, he called into being the mighty constitutional powers Lincoln needed and used so that government for the people should endure.

In rich measure he united the fervor and self-effacement of the patriot, the vision of the seer, the constructive soul of the builder. His work was subsoil, the undersurface work which lays the foundations, which, hidden from common view, make safe the towering structure of the Nation's growth. In the building of that temple of state, the soul, the foresight, the courage, the great brain of Marshall hewed to form and set to

place the cornerstones of the temple, and, though as of old, those stones,—which the mere surface builders of his time and the demagogues of his generation rejected,—which, when stress and strain came and the Nation was in the travail of a new birth, proved themselves the headstones of the corner.

John Marshall was simple in his daily walk of life. His modesty and humbleness of demeanor only served to magnify his real greatness. It was Henry Clay's estimate of him that he was cherished —I use Clay's words:

"For his artless character and his uniformly amiable and unostentatious deportment both in his public and private relations."

This simplicity he carried into his judicial opinions. No wordy eloquence, no hair-splitting discussions, no vain display of learning, nothing of the tricks of rare words or startling contrasts mar his decisions. In them we find naught but the pure, simple words drawn from the undefiled fountain of common English speech which formed the medium by which, with plain and unerring logic, Marshall wrote the decisions which bottom and buttress our national perpetuity, following

that wise direction of Holy Writ: "Write the vision and make it plain upon tables, that he may run that readeth it."

I bespeak the spirit of my judicial brethren of the Third Federal Circuit when I thank those in charge of this interesting ceremony and the donor of this statue that we have been asked to take part in the services of the day.

Far beyond the eloquence of words this silent figure in bronze will speak to us its lessons of a great soul, blameless in life, wise in judgment, fearless in action, and inspire us to serve our priesthood at the altar of justice and "do our duty in that state of life unto which it hath pleased God to call us."

Mr. Pepper: Judge Buffington and Mr. Lewis have both referred to our dual system of government, to the two systems of courts, state and Federal, which are the despair of the foreign student, but in which we recognize that delicate mechanism that balances central authority against local self government. Just as great and illustrious men have sat in the chair which John Marshall adorned, so have great and illustrious men occupied the office of Chief Justice in the courts of last

resort in the several states. In no state, however, has there been a more distinguished honor roll than in Pennsylvania, and the man whom I now have the pleasure of presenting to you is one than whom no Chief Justice has served his court or his country with greater zeal or with greater fidelity. The approaching expiration of his term of office is a matter of public concern and regret; the Honorable Robert Von Moschzisker.

REMARKS AT THE UNVEILING OF THE JOHN MARSHALL STATUE JANUARY 7, 1930, BY HON. ROBERT VON MOSCHZISKER, CHIEF JUSTICE, SUPREME COURT OF PENNSYLVANIA.

You have been told by those who preceded me of the career of John Marshall as a soldier, statesman, lawyer and Chief Justice. Speaking for the Pennsylvania judiciary, as I have been invited to do, I shall confine my brief remarks to Marshall's intercourse with and relation to our state and city; though, in this connection, I may be obliged to touch on some of the incidents of his life which have already been discussed by others, they will be no more than mentioned.

John Marshall's first public service in our state was as a young lieutenant in the Revolutionary

forces. He was with Washington at Valley Forge, where he is said to have "radiated good temper and hopeful, happy warmth," which were certainly needed there. He fought at Germantown, was in the famous combat at the Chew House, and did other valiant military service in Pennsylvania.

After the Revolution, during the struggle for the ratification of the federal constitution, Marshall came into contact and collaborated with Robert Morris, James Wilson and other Pennsylvanians, who journeyed to and helped him win the assent of his native state. He also at that time probably met, and no doubt opposed, Oswald, publisher of the *Independent Gazette* of Philadelphia, the anti-constitutional journalist, who, to offset the efforts of our Pennsylvania advocates of ratification, likewise journeyed to Virginia.

In 1793, Marshall took an active part in raising and equipping soldiers to put down the Whiskey Rebellion in Western Pennsylvania. Senator Beveridge, in his life of the great Chief Justice, expresses the opinion that Marshall probably joined the troops of his state which participated in that campaign; though this is by no means certain.

Marshall appeared as an attorney before the Supreme Court of the United States, sitting at Philadelphia, in the famous case brought by English creditors to test the American debt confiscation laws, and his lucid argument in that controversy did much to focus attention on him as publicist and lawyer. He later appeared in the courts of Philadelphia in the case of Hunter *v.* Fairfax, and paid several other visits to this city on professional matters, particularly in connection with the affairs of Robert Morris, whom he represented as an attorney, and with whom he was closely associated in many business transactions. As another intimate association with our city, Marshall's brother married Morris' daughter.

In a letter written during one of his visits to Philadelphia, Marshall complained that the social life of the city was too strenuous for him; he said so much rich food and wine was consumed that he longed for the plain fare and good cold water of his native state.

Marshall, as a member of the extraordinary mission appointed to adjust our differences with the French Republic, sailed from and returned to the port of Philadelphia, where he was received with all the popular acclaim usually given to a military hero.

The Chief Justice never sat in our city as a member of the Supreme Court. He was appointed in January, 1801, and took his seat February 4, 1801; that being the first day the court convened at the new capital, Washington. The only Pennsylvania colleague of Marshall was Henry Baldwin, who served with him on the bench of the Supreme Court for five years.

The University of Pennsylvania conferred the honorary degree of doctor of laws on Marshall in 1815. His biography of Washington was first published in Philadelphia, a second edition, intended especially for school children, also being brought out in this city; and it was here that, under the name of "A Friend of the Union," his reply to Roane's attack on the decision in McCulloch *v.* Maryland was published.

When Marshall came to our city in 1831, to be operated on by the famous Doctor Physick, the Bar had Inman, a Philadelphia artist, paint his portrait, which now hangs in the collection of the Philadelphia Law Association. At that time, in a reply to an address from the local bar, Marshall said his greatest satisfaction was that the Supreme Court had "never sought to enlarge the judicial power beyond its proper bounds nor

failed to carry it to the fullest extent that duty required"; this attitude, which undoubtedly prevailed during Marshall's time, truly reflects his guiding spirit.

From the brief review which I have made of Marshall's connection with our state and city, it may be seen that he first won distinction in Pennsylvania, as a soldier, and that it was before the federal courts in Philadelphia he first achieved recognition as a leading lawyer. Then he sailed from Philadelphia as an envoy to France, which was his first step in national statesmanship. Of course, Marshall's chief fame was as a judge; and, while the Supreme Court of the United States held several sessions in Philadelphia, they were prior to his service on the bench; so we missed the distinction of having him preside as Chief Justice in our city. Yet it was in Pennsylvania that, as deputy Judge Advocate General of the Continental Army, he performed his earliest judicial service; and during his chief justiceship, our state contributed some of the most distinguished lawyers who practised before him, notably Sergeant, Ingersoll, Dallas and Hopkinson. Then, again, one of the most famous opinions penned by Marshall was in United States *v.* Peters, a Penn-

sylvania case; though I suppose, we would not today boast of our position in that controversy.

As you have been informed, it was here in our city that the great Chief Justice died, July 6, 1835, and on July 8th the Liberty Bell cracked while tolling in his memory. A committee consisting of Major-General Winfield Scott, and five distinguished sons of Pennsylvania,—Henry Baldwin, Associate Justice of the Supreme Court, Richard Peters, formerly a judge of the United States District Court, John Sergeant, Edward D. Ingraham and William Rawle, leading Philadelphia lawyers, —accompanied his body to Richmond, Virginia.

John Marshall was Chief Justice of the United States from 1801 to 1835; in all a little less than 35 years. Of the 1215 cases disposed of during that period, he wrote opinions in 519. He averaged about 14 opinions a year, not more than one of these involving a constitutional point and less than one a year involving international law questions. Today, the average number of opinions written by Chief Justice Taft is something over 30 a year, and this count has no relation to the great mass of cases which, in these days, are finally disposed of, after study of the briefs, by refusal to allow them to come on for argument;

work with which, in Marshall's time, the Supreme Court was not burdened. Judicial work has increased by bounds since that period; for instance, in the year 1929 the Chief Justice of Pennsylvania wrote 25 regular opinions and 60 per curiam opinions, in addition to passing on many applications for appeals from the Superior Court and other such special work.

Though there were three Chief Justices before Marshall, and there have been six since, none of them have achieved a fame which at all approaches his; yet he lived in a comparatively simple age, at a time when life was not complex, and when, as a rule, law cases lacked the manifold complications of affairs in our modern world. Despite all this, and notwithstanding the comparatively small amount of judicial work called for by his period, and performed by him, and the further fact that the judicial office is the most difficult of public posts in which to win fame, he achieved it to a most remarkable degree, so that his name has a peculiar lustre of its own, unrivalled by that of any other American judge, state or national. It is fitting indeed that our historic city should possess a statue of that preëminent man, whose life touched it at so many points, in whose name

we are gathered today; and it is pleasant to contemplate that the gift of this work of art should have been made by our own James M. Beck, a student of and writer on the chart of government which Marshall did so much to elucidate and perpetuate.

Mr. Pepper: And now I shall ask you to adjourn for a five minute ceremony at the foot of the statue immediately outside this door; and I shall ask those who have spoken, together with Mr. Williams, to lead the company to the foot of the statue. Mr. Mayor—will you join in that honorable procession?

At the Statue.

Mr. Pepper: I think you will all agree, that when attending on occasions like this, there never were heard three more balanced addresses than those we listened to this afternoon. Each of them struck its own note and each made its contribution to an ultimate harmony. The early chapters of our national history are more the honor roll of names of men than mere records of events. Franklin, the philosophical revolutionist, and Samuel Adams, the flaming zealot, aroused

in the colonists the will to be one people. Washington by achieving independence, brought that will to its fruitage. Hamilton and Madison framed the structure of the Constitution, but it remained for John Marshall to breathe into their creature organic life. It was because he did this thing that we are assembled to do him honor today, if indeed any community can honor so great a man as he. No American community that has regard for the achievements of the past and for the liberties which they have purchased, can afford to be without an adequate memorial to the great Chief Justice. It is altogether fitting that the gift to Philadelphia of this fine statue should have come from one who has already put the city in his debt by reason of his many activities which have enriched our life. In accepting this memorial to John Marshall, we are deepening our sense of obligation to our good friend and fellow citizen, James M. Beck.

It is fortunate that the height of the statue and the character of the wreath itself, make it impossible to do more than lay the wreath at Marshall's feet. I say this is fortunate because no man would have disliked more than Marshall to have the laurel placed upon his brow. Therefore,

as a token of our high regard for him and in gratitude for the great services which he rendered to the country, we do now, on behalf of the donor, and with the approval and consent of the participating organizations, lay this, our tribute of admiration and respect, at the foot of the great Chief Justice.

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